

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
SOUTHWESTERN DIVISION**

**JERRY L. NEIL, as trustee for the** )  
**Beau Trust, a Missouri Irrevocable Trust,** )

**Plaintiff,** )

**vs.** )

**Case No. 10-3476-CV-SW-RED**

**UNITED STATES OF AMERICA,** )

**Defendant.** )

**ORDER**

Before the Court are Defendant's Motion to Dismiss (Doc. 5) filed by counsel for the United States and Plaintiff's Motion to Remand (Doc. 8). After careful consideration of the record before the Court, the Court **GRANTS** Defendant's Motion to Dismiss and therefore, will not address Plaintiff's Motion to Remand.

Plaintiff initiated this action in state court against the United States by filing a motion for a temporary restraining order. Plaintiff claims that the United States improperly filed a lis pendens against the real estate described in Plaintiff's motion for a temporary restraining order. The United States removed the action to this Court and moved to dismiss, arguing that it was improperly served. Plaintiff does not dispute that the United States was improperly served, but asks the Court to allow it to correct service. The Court finds no basis to correct the deficient service of process in this case. Rule 4(i)(4) of the Federal Rules of Civil Procedure, which Plaintiff cites as a basis to cure improper service, requires a court to allow a party a reasonable time to cure its failure to properly serve a United States agency, corporation, employee, or officer, none of which is the manner of service at issue in this case. The Court also declines to issue any order concerning service of process under

28 U.S.C. § 1447(a), given that no Complaint has been filed in this case and under the circumstances, nothing in the record suggests any provision of the Federal Rules of Civil Procedure would correct the deficient service of process in this case.

As such, the Court **REVOKES** the Temporary Restraining Order entered on November 12, 2010, by the Honorable Joseph W. Schoeberl, as service on the United States was improper, and **DISMISSES** this case without prejudice.

**IT IS SO ORDERED.**

DATED: April 4, 2011

/s/ Richard E. Dorr  
RICHARD E. DORR, JUDGE  
UNITED STATES DISTRICT COURT